clearwire

2000 Pennsylvania Avenue, Suite 4400
Washington, D.C. 20006

May 25, 2005

Via Electronic Filing
Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Education and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66
Notice of Ex Parte Presentation

Dear Ms. Dortch:

On May 18, 2005, Gerard Salemme and Nadja Sodos-Wallace of Clearwire Corporation, ("Clearwire") met with Henry Allen, Barrett Brick, Scott Delacourt, David Furth, Uzoma Onyeije, John Schauble, Gregory Vadas and Nancy Zaczek of the Wireless Telecommunications Bureau.[1] They discussed Clearwire's market launch plans. In addition, they discussed Clearwire's position on a number of the outstanding issues in this rulemaking that have already been put forth in its various pleadings. Those issues are summarized in the attached Talking Points.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this presentation is being filed electronically. Should any questions arise concerning this matter, kindly contact the undersigned.

Sincerely,

/s/ Nadja S. Sodos-Wallace

R. Gerard Salemme
Nadja S. Sodos-Wallace

cc (w/attachment): Henry Allen
Barrett Brick
Scott Delacourt
David Furth
Uzoma Onyeije
John Schauble
Catherine Seidel
Joel Taubenblatt

[1] Clearwire is aware that under the Commission's rules, this notice should have been filed one business day after the meeting. To the extent necessary, Clearwire requests a waiver of that rule to permit this letter to be included in the record.

Gregory Vadas
Nancy Zaczek

Clearwire Corporation Talking Points

May 18, 2005

Substantial Service

- The substantial service showing should be required within a relatively short time frame (e.g., five years). Five years should be long enough for licensees to transition and launch service. Allowing longer periods will only delay deployment and transition to the new band plan and allow spectrum to continue to be warehoused.
- The FCC should incorporate a modified version of the former BTA build-out requirement (constructing signals capable of reaching 2/3 of the population) as the new substantial service safe harbor for both fixed and mobile services offered over EBS/BRS spectrum. This standard will encourage aggressive development of broadband services. The standard should be modified to specify that the signal must be of a quality that can provide reliable broadband service. We have been and are meeting this with our current launches.
- BTA licensees that met the former build-out standards with respect to each relevant channel group, have continued providing valuable service over the spectrum, and meet the substantial service standard at the appropriate measurement point (i.e., five years after the effective date of the new rules), should receive credit for prior deployments. Discontinued deployments, however, should not be counted. Such a result would condone warehousing of spectrum.
- The FCC should evaluate substantial service showings for each licensed channel group. Adoption of a "system-wide" showing is not supported by FCC precedent and is too lax and imprecise.
- The Commission should affirm that discontinuing current service in advance of the launch of two-way service will not affect a licensee's status before the Commission.

Database Reconciliation

- The FCC should finish reconciling the ULS database. Reconciliation will allow auction participants to complete necessary due diligence and will benefit FCC staff by identifying licenses that must be transitioned to the new band plan.

Auctions

- The FCC should immediately identify and auction vacant or defaulted EBS spectrum and defaulted BTA licenses. Following the transition and self-transition periods, licenses should be audited and any not subject to a transition plan, granted an opt-out or waiver, or not self-transitioned, should be auctioned. A third auction should be held for that spectrum which does not meet the 5-year substantial service showing.

- An EBS white space auction need not be delayed because an early auction will not add complexity and cost to the transition to the new band plan because such spectrum need not be included in any transition plan, entitled to downconverters or program track migration.
- Spectrum should be auctioned on a BTA and channel group basis so that spectrum is made available to the greatest number of competitors. MBS channels may have lesser value than LBS and UBS channels and should be auctioned separately.

Unlicensed Underlay

- The FCC should prohibit new unlicensed uses in the band because they further complicate the transition, heighten the risk of interference, and potentially constrain deployment and affect the quality and ability of licensees to build out service.

Transition

- The transition should be based on BTAs.
- The FCC should refine the process for identifying receive sites that are entitled to replacement downconverters. Responses to pre-transition data requests should be required within 21 days of receiving the data request. If no timely response is received, the proponent can transition without: (1) program track migration; (2) replacement downconverters; and (3) interference protection.
- Receive sites should not be entitled to replacement downconverters without a certification that they are actively using the spectrum to meet distance learning services at the time the data request is received, and whose downconverters meet certain minimum technical criteria.
- Licensees whose spectrum is not subject to an initiation plan or have not been granted an opt-out or waiver to the transition should be given a period of time to self-transition.
- The FCC should reject any proposal suggesting that the entity with the most licensed/leased spectrum within the transition area should be deemed the sole proponent. This proposal is anti-competitive and does not acknowledge that the licensee with the most holdings may not be the party most interested in rapidly and widely deploying broadband services.
- The FCC should implement a cost-sharing plan similar to that used for PCS. All BRS licensees and BRS/EBS lessees benefiting from a transition should contribute a pro-rata share of transition costs. Educational entities using the spectrum for educational purposes should be exempt. All transition-related costs

should be included. Reimbursements should be required upon invoicing after the post-transition notice to the FCC and should not be dependent upon commercial launch.

- The BRS and PCS rules do not require reimbursement at launch of commercial service. BRS reimbursement should be triggered by the transition of all spectrum in a market and filing a post-transition notification with the FCC. Any benefits to being the proponent and thus first-in-time are outweighed by the financial impact of transitioning other licenses.

Technical Rules

- We generally support the technical rules as adopted by the Commission and oppose requests for more complicated rules.
- Expanded, more complicated out-of-band emissions rules are unnecessary. The FCC should not require more restrictive emissions masks in the absence of documented interference. This proposal is not supported and would require equipment vendors to meet tighter specifications for all antennae, making it more expensive. A request could be made for anticompetitive reasons.

- The FCC should not revise the antenna height benchmarking rule. Licensees should not have to share sensitive location and height data upon request without a showing of documented interference or at least only through a third party clearinghouse. Competitors could seek such information for anti-competitive purpose. The FCC should clarify that operators are not required to alter base station antenna heights without evidence of impermissible interference.
- The FCC should affirm that licensees can exceed signal strength limits at GSA boundaries if no affected licensee is providing service in a nearby GSA. Proposals that the first-launched licensee must get the consent of non-operational providers delays build-out and increases costs. The entity that launches first is still subject to the rules and must comply later on.
- To avoid protecting EBS receive sites where desired signal levels are already low, the proponent should not be required to provide interference protection to receive sites that, prior to transition, are not receiving a signal level of >-80dBm.
- The FCC should not prohibit or limit two-way use prior to transitioning to the new band plan. The FCC should reject any proposal requiring pre-transition broadband operators to engage in a notification or data request process with EBS licensees that have overlapping GSAs or whose receive sites are within 20 miles of a base station.

MVPD Opt-Out

- Clearwire joins Sprint in suggesting that opt-out should only be available on a waiver basis, and that no MVPD should be entitled to an automatic opt-out.